CLERK'S COPY. 7029

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. ~~265~~ 53.

IOWA LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

LULA T. LEWIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED MARCH 6, 1901.

(18,072.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 22, 1901.

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1 Caption.

Be it remembered, that at a term of the circuit court of the United States, in the fifth circuit thereof, and in and for the northern district of Texas, at Fort Worth, begun and holden on the 26th day of November A. D. 1900, and which term adjourned on the 19th day of January A. D. 1901, the Honorable Edward R. Meek, United States district judge for the northern district of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to wit:

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163.

2 *Transcript from District Court of Tarrant County.*

Filed March 2nd, 1900.

Caption.

THE STATE OF TEXAS, }
County of Tarrant. }

Transcript of the record from the district court (48th district of Tarrant county, Texas,) to the circuit court of the United States in and for the northern district of Texas.

LULA L. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY.

Plaintiff's Original Petition.

STATE OF TEXAS, }
and County of Tarrant. }

In the District Court of said County.

To said honorable court:

Your petitioner, Lula T. Lewis, a resident of Fort Worth, Texas, complains of the Iowa Life Insurance Company and with respect shows that the defendant is a corporation organized and existing under the laws of the State of Iowa, having an agent in Tarrant county, Texas, the name of said agent being S. E. Starns. Defendant in the matters and things hereinafter set forth was engaged in business as a life insurance company and on the 13th day of March 1899, did issue its policy No. 30140, whereby it did, in consideration of certain agreements in the application therefor, copy of which application was to said policy attached, and of certain provisions and requirements set forth in said policy, and in consideration also of the payment of $74.61, being the premium on said policy for the first year, promise to pay the sum of three thousand dollars

to plaintiff, she being then the wife of the insured Thos. M. Lewis, less any indebtedness of the insured or the beneficiary to the defendant company, with the balance of any year's premium remaining unpaid within 60 days after the receipt and acceptance at the company's office in Chicago, Illinois, of the satisfactory proofs of the fact and cause of death within the terms of this policy of the said Thos. M. Lewis of Fort Worth, Tarrant county, Texas, provided said death should occur on or before 12 o'clock noon of March 4th 1900, which said policy was duly executed in behalf of the defendant by its duly authorized agent.

3 Plaintiff would further show that the provisions and requirements referred to hereinabove as a part of the said policy were in words and figures as follows, viz:

"This policy is a contract made and to be performed in accordance with the laws of the State of Iowa, and shall be construed only in accordance with the charter of said company and the laws of said State, and shall not go into effect until the premium hereunder, or a semi-annual or quarterly installment thereof, shall have been actually paid during the lifetime and continuance in good health of the insured. Upon the payment of the premium there shall be delivered a receipt signed by the president or secretary and countersigned by an authorized agent.

All renewal premiums are due and payable at the office of the company, in Chicago, Illinois, unless otherwise agreed in writing, but may be paid to authorized agents in exchange for receipts signed by the president or secretary, and countersigned by such agents. Failure to pay the premium required to renew this policy, or any part thereof, or any note given on account of the renewal premium or any part thereof, when due, shall cancel the insurance and terminate this policy and all payments previously made hereon shall belong to and be retained by said company.

Should this policy, or others of like form which may be issued to succeed it, be continued in force for the term of ten years, the said company will issue a new policy for an equal amount and equal term without medical re-examination, subject to the premium for the age then attained by the insured, provided the request for such new policy be made to said company in writing by the insured at least six months previous to the last day of the term for which the expiring policy can be renewed and provided this policy or others succeeding it, be returned to the office of the company, while in force, for this purpose.

This policy may at any anniversary of the date of its issuance be exchanged for any other form of policy issued by the company for an amount not to exceed the amount of this policy (whereby the insurance liability of the company shall not be increased, nor the premium rate lowered) and at the rate then charged by the company for the form of policy applied for, at the then age of the insured, or the insured may, at such anniversary, change this policy for an endowment, or any other form of policy contract, whereby the insurance liability of the company shall not be increased nor the

premium rate lowered (such policy to bear the same date, age
4 and number as the original policy) upon paying the difference between the premiums paid under this policy and the premiums required under the form for which this policy is to be exchanged, with interest. At the time of making such exchange the company will, upon request, make a loan under the new policy, in accordance with its terms, for the amount stipulated in such new policy. Such loan may be used in the payment of the premium or premiums upon the new policy.

Should change of policy be made as above, no medical re-examination will be required, provided applications be made in writing to the company at least six months prior to such anniversary and provided the first premium upon the new policy be paid while this policy, or any policy issued to succeed it, be in full force. All agreements made by this company are signed by the president or secretary. This power will not be delegated. No other person can alter or waive any of the conditions of this policy, or issue permits of any kind, or make an agreement binding upon said company. No suit or action shall be maintained hereon unless actually begun within one year from the date of the death of the insured without reference to the time of furnishing the proofs of death. If any suit in law or equity be commenced after such period of one year, the lapse of time shall be a conclusive bar to any recovery hereon, any statute to the contrary notwithstanding. Any assignment of this policy must be made in duplicate, and both copies sent to the home office for acknowledgment, one of them to be retained by the company. The company will not assume responsibility for the validity of an assignment."

Plaintiff would further show that at the time of making application for such policy, and on to wit: March 4th 1899, the said Thos. M. Lewis did execute and deliver unto the said S. E. Starns, as agent for defendant, and did on that day pay $74.61 under the recitation in the application of said policy as follows: "A note for premium of $74.61 has been paid under this application to make the insurance binding from the date hereof, on condition that if the risk is not assumed by this company, this sum is to be returned, in accordance with the receipt given as voucher for said payment," and plaintiff would further show that said Starns for and in behalf of the defendant company did accept said note in payment of premiums on said policy for the year next succeeding March 4th 1899.

Plaintiff would further show that at the same time and on March 4th 1899, S. E. Starns for and on behalf of the defendant did exe-
cute and deliver unto the said Thos. M. Lewis certain instru-
5 ments styled "agent's receipt for advance premiums," reciting:

"Iowa Life Insurance Company. Received from Thomas M. Lewis thirty-seven and $\frac{3}{100}$ dollars being the annual premium on an insurance of $3,000 *dollars* on the life of said Thomas M. Lewis for which application is this day made by him to the Iowa Life Insurance Company."

"The said Thomas M. Lewis shall be insured from the date of this receipt, in accordance with the rate of premiums and provisions of

the policies of said company. Provided always, such application shall be approved and accepted by the company; but should the said application be declined by the company, then the amount the receipt whereof is herein acknowledged will be returned within thirty days.

Dated at Fort Worth, March 4th 1899.

S. E. STARNS, *Agent.*"

On March 18th 1899, S. E. Starns for and in behalf of the defendant did issue certain instruments of that day as follows:

"Iowa Life Insurance Company, Chicago office.

Received $74.61 being the first annual premium due March 4th 1899, under policy No. 30140, on the life of Thos. M. Lewis, subject to the terms of the contract and the conditions on the back hereof.

Read the notice to policy-holders on the back of this receipt.

This receipt is not binding unless it is countersigned by

(Countersigned) S. E. STARNS,

Agent, Fort Worth, Texas."

Executed by the president of the defendant.

On the back said instrument reads as follows:

"For terms of mutual agreement, see application and policy. Notice to policy-holders. This receipt to be valid must be signed by the president or secretary of the company and in exchange therefor, cash or its equivalent be given by the holder of this policy, on or before date payment is due, and when payment hereon is made to an authorized agent or collector, such agent or collector must countersign at the date of payment to him.

If note be given for the payment of the premium hereon or any part thereof, and same is not paid at maturity, the said policy shall cease and determine."

Plaintiff would with respect further show unto your honor that by virtue of matters and things set forth herein the defendant did become liable and promise to pay the plaintiff the sum of three thousand dollars in case he, the said Thomas M. Lewis, did, between March 4th 1899 and March 4th 1900, depart this life.

Plaintiff would further show that Thos. M. Lewis did depart
6 this life on to wit: — day of —— 1899, whereupon this defendant did cause to be made unto S. E. Starns as agent of said defendant, an application for the furnishing of proofs of death in such form as might be required by defendant in order that she might cause same to be presented to the defendant at its home office in the city of Chicago, State of Illinois, as provided by the terms and conditions of said policy; whereupon said S. E. Starns, acting for and on behalf of the defendant, did refuse to furnish to the plaintiff proofs of death and stated that he on behalf of the defendant refused to recognize any liabilty on the part of the defendant, — the plaintiff by reason of the matters and things hereinabove set forth.

Plaintiff would further show that heretofore and on to wit: the

4th day of January 1900, she did cause to be written unto the defendant at Chicago, Illinois, a letter stating that Mr. Starns had refused in behalf of the company to recognize any liability under the policy herein sued on, and had refused to furnish proofs of death, and that the letter further requested that the defendant would, by return mail, advise plaintiff's attorneys, Messrs. Capps and Cantey, who wrote said letter, as to whether or not they recognized any liability under said policy or would furnish proofs of death.

Plaintiff would further show that notwithstanding said request for early answer defendant neglected to answer said communication, so that the reply was not mailed in Chicago until January 15th 1900.

Plaintiff would further show that said reply states that the matter in question should properly have the attention of the general counsel, who had been ill and was just then leaving the city for a trip of a week or ten days, and that reply to plaintiff's communication would have to wait until his return.

Plaintiff would further show that the Febr'y term of this honorable court is so near at hand that she cannot wait the time stated in said letter without the probability of considerable delay in service upon the defendant, for which reason she does now institute this suit upon the said policy relying upon the declination of the defendant's agent, S. E. Starns, to recognize any liability under said policy.

By virtue of the premises and of the laws of the State of Texas to such cases relative, plaintiff says that defendant became liable bound and promised to pay unto the plaintiff the sum of three thousand dollars, with interest thereon from the date of the death of the said Thomas M. Lewis, together with penalty of 12% on the amount due him, together with a reasonable attorneys' fees,
7 which the plaintiff here alleges to be ten per cent. upon the amount due under said policy as interest, principal and penalty;

Wherefore, premises considered, plaintiff prays that the defendant be cited to appear in answer herein and that upon hearing hereof she have judgment for her debt, damages, interest, attorneys' fee and costs of suit, together with all other and such further relief which she may be entitled to receive, either legal or equitable, both general and special.

CAPPS AND CANTEY,
Attorneys for Plaintiff.

Filed January 27th 1900.

W. D. McVEAN,
District Clerk.

Cost Bond.

In the District Court of Tarrant County, Texas.

LULA T. LEWIS
vs. } 17303.
IOWA LIFE INSURANCE COMPANY.

STATE OF TEXAS, }
Tarrant County. }

Know all men by these presents: That we, Lula T. Lewis, as principal, and —— —— and —— —— as sureties, do hereby acknowledge ourselves bound and firmly held to pay all costs which may accrue in the prosecution of the above styled and numbered cause in the district court of Tarrant county, Texas.

Witness, our hands this January 19, 1900.

Principal: LULA T. LEWIS.
Sureties: S. B. CANTY.
WM. CAPPS.
B. L. WAGGOMAN.
IRELAND HAMPTON.

Approved this January 27, 1900.

W. D. McVEAN,
District Clerk, Tarrant Co., Texas.

Filed January 27, 1900.

W. D. McVEAN,
District Clerk.

Citation.

The State of Texas to the sheriff or any constable of Tarrant county, Greeting:

You are hereby commanded to summon the Iowa Life Insurance Company, a corporation, by service hereof on S. E. Starns, its agent, to appear before the district court of Tarrant county, Texas, 18th judicial district, at the next regular term thereof, to be held at the court-house in the city of Fort Worth, on the second Monday in February A. D. 1900, the same being the 12th day of said month, then and there to answer the petition of Lula T. Lewis, plaintiff, filed in said court on the 27th day of January A. D. 1900, against The Iowa Life Insurance Company, defendant for suit, said suit being numbered 17303, the nature of which demand is as follows, to wit: That on March 13th 1899, defendant issued its policy of insurance No. 30140, insuring the life of Thos. M. Lewis, the husband of plaintiff in the sum of three thousand dollars, and by virtue thereof the defendant became liable to pay plaintiff said sum of three thousand dollars in case the said Thomas M. Lewis did between March 4th 1899 and March 4th 1900, depart this life and that the said Thomas M. Lewis did depart this life on the — day of —— 1899; whereupon plaintiff cause to be made

unto said Starns, as agent of defendant an application for the furnishing of proofs of death in such form as might be required by the defendant and that said S. E. Starns, acting on behalf of defendant refused to furnish to plaintiff proofs of death and stated on behalf of defendant *refused to furnish to plaintiff proofs of death and stated on behalf of defendant* that defendant refused to recognize any liability on the part of defendant to the plaintiff by reason of the matters set forth herein, by virtue of the premises, plaintiffs says, that defendant has become liable to pay her three thousand dollars, with interest from the date of the death of the said Thos. M. Lewis, together with the penalty of 12 % on the amount due together with 10 % attorneys' fees on the amount of said policy, principal, interest and penalty; wherefore plaintiff prays for her debt, damages, interest, attorneys' fees and costs of suit, and you will deliver to the said defendant in person a true copy of this citation.

Herein fail not, and have you then and there this writ, showing how you have executed the same.

Witness W. D. McVean, clerk of the district court of Tarrant county, Texas.

Given under mf hand and seal of office, at Fort Worth, this the 29th day of January A. D. 1900.

W. D. McVEAN,
[SEAL.] *Clerk of the District Court of Tarrant County, Texas.*
By J. C. BRANUM, *Deputy.*

Issued January 29th 1900.

W. D. McVEAN, *Clerk,*
By J. C. BRANUM, *Deputy.*

(*Sheriff's Return.*)

Came to hand this the 29th day of January 1900, and executed the 30th day of January 1900 by delivering to S. E. Starns,
9 local agent for the Iowa Life Insurance Company, a corporation.

STERLING P. CLARK,
Sheriff Tarrant County, Texas.
By C. E. PARSLEY, *Deputy.*

Fee—serving copy	1.50
Mileage	.10
Total	$1.60

Def'ts Petition for Removal of Cause.

In the District Court of Tarrant County for the 48th Judicial District of Texas.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } 17303.

To the honorable district court:

Iowa Life Insurance Company, the defendant in the above-styled cause prays that said cause be removed into the circuit court of the United States for the northern district of Texas, sitting at Fort Worth, and that this court proceed no further therein; and it shows grounds for its said petition as follows:

Said cause was begun by the plaintiff's filing her original petition in this court on January 27, 1900. Thereafter a citation was duly issued and served, by which your petitioner is required to answer said original petition before the call of the appearance docket on the second day of the term, beginning Monday, February 12, 1900. Your petitioner has not yet answered in said cause, but the same is now pending against it.

When said cause was begun the plaintiff was, and she now is, a citizen and resident of Tarrant county in the State of Texas, and the defendant then was, and it now is, a private corporation incorporated under the laws of the State of Iowa and a citizen and resident of said State of Iowa; and it was not then and is not now a resident of the State of Texas.

The matter in dispute in said cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

Your petitioner files herewith its bond, whereon Fidelity and Deposit Company of Maryland is surety, for its entering in said circuit court of the United States, on the first day of the next session thereof, a copy of the record in said cause, and for paying all costs that may be awarded by the said circuit court of the United States if such court shall hold that said cause was wrongfully or improperly removed thereto, and also for its appearing and entering special bail in said cause if special bail was originally requisite therein.

MAURICE E. LOCKE,
Attorney for Petitioner.

THE STATE OF TEXAS, }
County of Dallas. }

Maurice E. Locke, being first duly sworn, upon his oath says: I am attorney for Iowa Life Insurance Company in the above styled cause. The allegations contained in its foregoing petition are true.

MAURICE E. LOCKE.

Sworn to and subscribed by Maurice E. Locke before me, this the 9th day of February A. D. 1900.

A. E. FIRMAN,
Notary Public, Dallas Co., Texas.

[SEAL.]

Filed Feb. 13, 1900.

W. D. McVEAN,
District Clerk.

Bond.

In the District Court of Tarrant County for the 48th Judicial District of Texas.

LULA T. LEWIS
vs. } 17303.
IOWA LIFE INSURANCE COMPANY.

Defendant's bond for removal of cause.

Iowa Life Insurance Company, a private corporation domiciled in Sioux City, Iowa, as principal, and Fidelity and Deposit Company of Maryland, a private corporation domiciled in Baltimore, Maryland, and duly authorized by its charter and by compliance with the laws of the State of Texas to do business as a surety company in the State of Texas, as surety, do hereby acknowledge themselves jointly and severally bound unto Lula T. Lewis, of Tarrant county, Texas, in the sum of one thousand dollars, well and truly to be paid unto her or her heirs, executors, administrators, or assigns.

The condition of this bond is such that if said Iowa Life Insurance Company, the defendant in the above-styled cause, now pending in the district court of Tarrant county for the forty-eighth judicial district of Texas, shall enter in the circuit court of the United States for the northern district of Texas, sitting at Fort Worth, on the first day of its next session, a copy of the record in said cause above named, and shall pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said cause was wrongfully or improperly removed thereto, and shall appear and enter special bail in said suit, if special bail was originally requisite therein, then this bond shall become null; otherwise it
11 shall remain in full force.

In testimony whereof, these presents have been signed at Dallas, Texas, by the obligors above named, both acting through their attorneys and agents thereunto duly authorized, this the 9th day of February, A. D. 1900.

IOWA LIFE INSURANCE COMPANY,
[SEAL.] By MAURICE E. LOCKE, *Its Attorney.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By A. T. WATTS, *Local Director.*

Attest: JNO. A. BAMARD, *Agent.*

Approved February 13th, 1900.
IRBY DUNKLIN,
Judge 48th Judicial District of Texas.

Filed February 13, 1900.

W. D. McVEAN,
District Clerk.

Order on Removal.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } 17303.

23RD FEBRUARY, 1900.

This day came on to be heard the petition of Iowa Life Insurance Company, *the petition of Iowa Life Insurance Company*, the defendant in the above-styled cause for the removal thereof to the circuit court of the United States for the northern district of Texas, sitting at Fort Worth, it is ordered by the court that the bond filed by the defendant with its said petition be approved, and that said cause be removed to the circuit court of the United States, and that this court proceed no further therein.

Bill of Costs.

LULA T. LEWIS, Plaintiff,
vs.
IOWA LIFE INS. CO., Defendant. } No. 17303.

Clerk's fees.	Plaintiff.	Defendant.
Filing and docketing	.30	
Issuing citations	1.00	
Recording return	.50	
Filing papers	.10	.40
Entering appearances	.05	.05
Entering orders	.....	.75
Transcript	.....	5.50
Total clerk's fees	1.95	6.70
Sheriff's fees.		
Executing citations	.85	
	2.80	6.70
Total		9.50

12 STATE OF TEXAS, }
County of Tarrant. }

I, W. D. McVean, clerk of the district court of Tarrant county, Texas, do hereby certify that the above and foregoing is a true and correct copy of all the proceedings had in said court in cause No. 17303, Lula T. Lewis *vs.* Iowa Life Insurance Company, as the same appears on file and of record in my said office.

Given under my hand and seal of said court at office in the city of Forth Worth, Texas, this the 2nd day of March, A. D. 1900.

W. D. McVEAN,

[SEAL.] *Clerk District Court, Tarrant County, Texas.*

The foregoing has the following endorsement, to wit: No. 163. Lula T. Lewis *vs.* Iowa Life Insurance Co. From district court, Tarrant county, Texas. Filed 2 day of March, 1900. J. H. Finks, clerk, by J. B. Finks, deputy.

13 *Plaintiff's 1st Amended Original Petition.*

Filed January 10th, 1901.

In the United States Circuit Court for the Northern District of Texas, Sitting at Forth Worth.

LULA T. LEWIS *vs.* IOWA LIFE INSURANCE CO. } No. 163.

To the honorable judges of said circuit court:

Now comes Lula T. Lewis, plaintiff, and with leave of court first had and obtained files, this her first amended original petition, and complaining of the Iowa Life Insurance Company, with respect represents that plaintiff is a resident citizen of Tarrant county, Texas, and the defendant is a corporation organized under the laws of the State of Iowa, also maintaining an office in Chicago, Illinois, and at the times hereinafter mentioned had and maintained an office and agency in Tarrant county, Texas, and at the times hereinafter mentioned said defendant was engaged as a life insurance company doing business in the State of Texas and in the city of Fort Worth and elsewhere.

Plaintiff represents that heretofore, to wit: on the 13th day of March, 1899, the said defendant insurance company did execute, issue and deliver to one Thomas M. Lewis, the husband of the plaintiff, its certain policy of life insurance, the same being No. 30140, whereby the said defendant did according to the face and terms of said policy covenant, contract and bind itself that in consideration, among other things, of the payment of $74.61, the same being the premium on said policy for the first year, promise and agree to pay to the plaintiff, Lula T. Lewis, wife of Thomas M. Lewis (if living, if not living to the insured's executors or assigns, less any indebtedness of the insured or beneficiary to the defendant, together with the balance of any year's premium remaining unpaid) the sum of $3,000 within sixty days after receipt and acceptance at the defendant company's office of satisfactory proofs of the fact and cause of death of said Thomas M. Lewis of Fort Worth, Texas, provided the said Thomas M. Lewis should die on or before twelve o'clock noon of the 4th day of March A. D. 1900. That thereby and by reason thereof the said defendant insurance company became liable and

promised and agreed with the plaintiff by said contract or policy in writing as aftersaid to pay her the sum of $3,000 provided that the death of Thos. M. Lewis should occur on or before the 4th
14 day of March 1900, and to pay the same within sixty days after the receipt by it of satisfactory proofs of the fact and cause of death of him, the said Thomas M. Lewis.

And the plaintiff would further show that the said Thomas M. Lewis, the husband of plaintiff, had by the terms of said contract insured his life for the plaintiff upon his death provided he should die during the period of one year, beginning on the 4th day of March 1899 at noon, and ending on the 4th day of March 1900 at noon.

Plaintiff would further represent and show unto your honors that the said Thomas M. Lewis, the insured mentioned in said policy above set out, died in Fort Worth, Texas, on to wit: the 7 day of October 1899, and while said policy of insurance was in force and obligatory according to its terms above set out upon said defendant. That within a few days after the death of said Thomas M. Lewis, to wit: on the — day of October 1899, the said plaintiff through her authorized agents and representatives applied to the defendant insurance company through its duly authorized agents and representatives in Fort Worth, Texas, for blank proofs of death in such form as might be required by the defendant in order that she might cause the same to be made out and presented to the defendant, as provided by the terms and conditions of said policy, and at the same time notified the said agent and representative of defendant, to wit: one S. E. Starn, of the death of said Thomas M. Lewis.

Plaintiff represents that at that time and for a long time theretofore the said defendant company had and kept certain blank forms of proofs of death which it required to be used in furnishing proofs of death under its policies, and which it was defendant's usage to furnish and provide to beneficiaries under policies issued by it upon the maturity of same. That upon such application to said Starn as aforesaid for blank proofs of death, he, the said Starn, acting for and on behalf of defendant and being thereunto duly authorized, did peremptorily refuse to furnish to the plaintiff or to her agents and representatives for her benefit, any blank forms of proof of death whatsoever, and did then and there on behalf of said defendant company disclaim and refuse to recognize any liability whatsoever on the part of the defendant company on account of said policy herein sued upon and issued as aforesaid upon the life of said Thomas M. Lewis.

And plaintiff would further show that thereafter and on to wit: the 4th day of January 1900, she did cause through her agents and attorneys a certain letter to be written to said defendant in-
15 surance company to its home office, wherein and whereby she did advise the said company at its home office, that through said agent it refused to furnish said blank proofs of death to plaintiff, and had refused to recognize any liability upon the company on the said policy herein sued on, and disclaimed all liability on the part of the company, and the said letter so written on behalf of the plaintiff aforesaid requested the defendant company that it

would advise the plaintiff's attorneys, who wrote the said letter whether or not the company confirmed or ratified the acts of said Starn or recognized any liability under said policy, or would furnish any blank forms of proofs of death in order to enable plaintiff to comply with the terms of said policy.

Plaintiff would show that notwithstanding said communication in substance as hereinabove set out the defendant company did not reply until the 18th of January, and in and by said reply said defendant company stated that the matter inquired of should have the attention of their general attorney and refused (by their silence) to furnish the blank forms, or disclaimed or repudiated the acts of said Starn which had been fully communicated to it. That said defendant in all things last above set out, fully ratified the acts of said Starn, and said defendant did refuse to furnish any forms of proofs of death, and has at all times since the death of said Thomas M. Lewis refused to acknowledge any liability on account of said policy, and has claimed that said policy was not in force at the time of the death of said Lewis; that by reason of the foregoing facts the said defendant waived the requirements of said policy requiring the receipt by it of proofs of the fact and cause of death of the insured Thomas M. Lewis.

Plaintiff would further show that by virtue of the laws and statutes of the State of Texas in such cases relative the defendant has become liable and bound to plaintiff for interest on the amount of said policy from the date of the death of said Thomas M. Lewis, together with a statutory penalty on the whole amount due her of 12 per cent., and also a reasonable attorneys' fee in this behalf, which reasonable attorneys' fee, plaintiff alleges, is the sum of $750, and that the plaintiff in addition to the amount of the policy sues herein and in this behalf as well to recover the interest and 12 per cent. penalty and the attorneys' fees hereinabove set out. That by virtue of the premises and of the laws of the State of Texas the defendant insurance company has become liable and bound and promised to pay unto the plaintiff the said sum of $3,000 as stipulated in the face of said contract or policy of insurance as hereinabove set
16 out, together with the interest thereon from the date of the death of the said Thomas M. Lewis, to wit: October 7, 1899, and the penalty of 12 per cent. thereon and the sum of $750 as attorneys' fees, for which amount she prays the judgment of the court, and also for such other and further relief including costs of suit as she may be entitled —, legal or equitable, general and special.

CAPPS & CANTEY,
Att'ys for Pl'ff.

The foregoing has the following endorsement, to wit:—

No. 163. Lula T. Lewis *vs.* The Iowa Life Insurance Company. Plaintiff's first amended original petition. Filed 10 day of Jan'y 1901. J. H. Finks, clerk by J. B. Finks, deputy.

17 *Plaintiff's 1st Supplemental Petition.*

Filed January 10th, 1901.

In the United States Circuit Court for the Northern District of Texas, Sitting at Fort Worth.

LULA T. LEWIS
vs.
THE IOWA LIFE INSURANCE CO. } No. 163.

To the honorable circuit court:

Now comes the plaintiff, Lula T. Lewis, and with leave of the court first had and obtained files this her first supplemental petition, and by way of replication to the defendant's first amended answer, says:

1st. The plaintiff demurs to the pleas contained in defendant's amended original answer, saying that the same and each of the same are insufficient in law, wherefore she prays judgment of the sufficiency of the same.

1st *a*. And for further replication the pl'ff denies — and singular the allegations in def't's answer contained and of the same demand strict proof.

2nd. And for further answer and by way of replication to said defendant's answer, plaintiff represents and would show to the court with reference to so much of defendant's answer as pleads or alleges the conditions of the policy, namely: "that same should not go into effect until the premium should be actually paid," that this provision of the policy sued on was at the time of the issuance of same duly and legally waived in this, that the defendant's agent, one Starn, who solicited the insurance and had authority to collect the premium therefor, was entitled to receive of the first premium, or of the annual premium in consideration for which said policy was issued, as much as to wit: 75 per cent. of same. That at the time of issuing the policy sued upon the said Starn entered into an agreement with the insured, Thomas M. Lewis, by the terms of which said Lewis agreed to do and perform certain services for and for the benefit of said agent S. E. Starn between them agreed upon, to the extent of one-half of the said premium, and to wit: $37.30; and the said Starn further agreed to accept on behalf of the said defendant company the note of the said Thomas M. Lewis for the balance of said premium, to wit, $37.31. That in addition to the agreement and contract between the said Starn and the said insured with reference to the performance of the said services hereinabove mentioned, the said Thomas M. Lewis executed and delivered to the said Starn his certain promissory note payable to the order of himself, due six months after date, for the sum of $37.31, payable at

18 Fort Worth, Texas, which said note was a negotiable instrument of the highest order and a complete and bonding obligation upon the said Thomas M. Lewis for the payment of the same.

That said note was unconditional in all respects and unaffected by any contract of insurance between the defendant and the said Thomas M. Lewis. That the said defendant company after the execution of said note and the execution of the said agreement for the balance of said premium between said Starn and said Thomas M. Lewis, ratified the acts of the said Starn in accepting payment of the premium in the manner in which it was made, and duly issued the policy of insurance herein sued upon, and acknowledged receipt of said annual premium of $74.61; wherefore the plaintiff says that said clause as pleaded by the defendant, if existing in said policy, has been wholly waived and the said defendant is estopped now to claim any benefit under the same.

3rd. And further answering and by way of further replication to the defendant's amended answer plaintiff would show that the policy of insurance sued on herein contained no provision that the same should be void in the event of the non-payment of any note given for the premium or a part thereof. That the note which was executed by the insured was a binding obligation upon him, negotiable in character and obligatory under all circumstances. That the same was unconditional and contained no provision for the forfeiture of the policy of insurance, and in no manner referred to the insurance. That the same was a payment of the premium, given and accepted as such. That at the time the policy was issued the said Starn as agent of the company had a right to retain out of said premium as much as to wit: 75 per cent. of the same individually for his own benefit, and in his own behalf the right to contract for the payment of that much of the premium as he might see fit, and as well the right and authority from the defendant to contract in any manner for the payment of the entire premium stipulated for in the policy. That when the said policy of insurance was issued, the said Starn as agent of the defendant accepted in payment of said premium of $74.61 the note hereinabove set out for $37.31 and the balance in other valuable considerations agreed upon between him and the said Thomas M. Lewis.

That the said note so given by the said insured, Thomas M. Lewis, for a part of said premium, matured on to wit: the 7th day of September 1899. That the same at the time of its maturity was in the hands of said Starn and was not presented to the said Thomas M. Lewis until, to wit: the 28th day of September 1899. That when the same was presented the insured and plaintiff beneficiary in said policy, agreed to pay the same at once. The
19 said Starns agreeing to receive the money at any time before the 1st of October 1899. That on to wit: the 29th day of September 1899 the said plaintiff and the said insured tendered the amount of said note to the said defendant through its agent Starn, who thereupon declined to receive the same. That the said defendant did not claim any forfeiture of said policy upon the maturity of said note and did not tender the said note or offer to deliver the same to the insured, and never have done so, but on the contrary the said defendant waived all its rights, if any it ever had, to claim a forfeiture of said policy for the non-payment of said note at

its maturity, and did agree with the insured and this plaintiff to extend the time of payment of said note at least till the 1st day of October 1899, and did agree to accept payment of same at any time before that day, and did make demand for the payment of said note after the same had matured, and that after the maturity of said note the said defendant did not claim a forfeiture, but recognized that said policy was still in force. That plaintiff and insured offered and tendered said money to said defendant through its said agent Starn in payment of said note before the 1st day of October, and did thereafter offer and tender the money to pay said note, which the defendant declined to accept, notwithstanding the fact that it still held the said note and still holds the same. That all the said tenders and agreements and waivers were made before the death of the said Thomas M. Lewis. That the plaintiff is still ready to pay said note and offers and tenders so to do, and as well any amount of principal and interest on said premiu- which is claimed to be due by said defendant.

Wherefore plaintiff says that the said defendant by its own acts and those of its agent aforesaid duly authorized, has waived any right, if it ever had any, to claim a forfeiture of said policy on account of the non-payment of said note at its maturity, and by reason of the premises are estopped to claim any rights by reason of that fact, or to claim that said non-payment of said note in any manner affected the terms of the policy of insurance sued upon. That the facts alleged in said amended answer by def't constitute no defense.

Wherefore plaintiff prays judgment as in its original petition.

CAPPS & CANTEY,
Att'ys for Pl'ff.

The foregoing has the following endorsement, to wit:—

No. 163. Lula T. Lewis *vs.* Iowa Life Insurance Co. Plaintiff's first supplemental petition. Filed 10 day of Jan'y. J. H. Finks, clerk, by J. B. Finks, deputy.

20 *Defendant's 3rd Amended Original Answer.*

Filed January 11th, 1901.

In the Circuit Court of the United States, Northern District of Texas, at Fort Worth.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163.

To the honorable the judges of said court:

1.

Now by its attorney comes the defendant in the above-styled cause, and under leave of the court files this its third amended original answer, in lieu of its second amended original answer filed December 27, 1900. So amending, it makes answer as follows to the first amended original petition of the plaintiff.

2.

The defendant demurs to said petition and says that the same is not sufficient in law to require of it further answer thereto.

3.

The defendant specially excepts to all that portion of said petition whereby, in addition to the face of the policy and interest thereon, the plaintiff seeks to recover from the defendant a statutory penalty of twelve per cent. of the whole amount due her, and an attorney's fee of seven hundred fifty dollars. The grounds of this exception are:

(*a.*) There is no law which is valid and binding upon the defendant and which requires it to pay anything to the plaintiff upon account of damages, penalty or attorneys' fees. Article No. 3071 of the Revised Statutes of the State of Texas, which alone purports to make such a requirement, is void because it contravenes the provisions of the fourteenth amendment to the Constitution of the United States, in that it denies to the defendant the equal protection of the laws.

(*b.*) Said petition does not show that the plaintiff ever demanded from the defendant payment of the policy sued upon.

4.

The defendant specially excepts to so much of said petition as seeks to recover from the defendant the sum of seven hundred fifty dollars as a reasonable attorney's fee. The ground of this exception is that said petition does not show that the plaintiff has paid or promised to pay said sum, or any sum, as fees to attorneys for their services in prosecuting and collecting her claim against the defendant.

5.

The defendant denies all and singular the allegations in said petition contained.

21 6.

The defendant says that its only promise was that upon certain conditions it would pay the sum of three thousand dollars within sixty days after receipt and acceptance, at its office in Chicago, Illinois, of satisfactory proofs of the fact and cause of the death of Thomas M. Lewis. It never has received such proofs of death and never has waived the same. S. E. Starn, through whose acts the plaintiff alleges that the defendant waived such proofs of death, had no actual authority to waive the same in behalf of the defendant and was not held out by the defendant as having such authority; nor did the defendant ever ratify any waiver of said proofs of death by him made. One of the provisions and conditions of the policy contract sued upon is in words and legal effect as follows: "All agreements made by this company are signed by the president or secretary. This power will not be delegated. No other person can alter or waive any of the conditions of this policy, or issue permits

of any kind, or make an agreement binding upon said company." S. E. Starn never was the president or secretary of the defendant company.

7.

On to wit: March 4, 1899, Thomas M. Lewis applied to the defendant in writing for three thousand dollars of insurance upon his life in favor of the plaintiff, such insurance to be of the kind known as "ten-year convertible term stock" insurance. Said application was made through S. E. Starn, who was a soliciting agent for the defendant. In it the statement was made that a note had been given for the annual premium of seventy-four and $\frac{61}{100}$ dollars, to be returned in case the risk should not be assumed by the defendant. On to wit: March 13, 1899, the defendant decided to accept said application upon the terms and conditions therein stated and those usually embraced in its "ten-year convertible term stock" contracts of insurance. Thereupon it forwarded to its said soliciting agent for delivery to Thomas M. Lewis in exchange for his said note the policy sued upon and a receipt for the first annual premium. Said policy and receipt were of the form always used by the defendant in making its "ten-year convertible term stock" contracts of insurance. They were likewise of the form which Thomas M. Lewis understood would be employed. A policy and receipt of the same form were shown and fully explained to him by S. E. Starn at the time of making his application; and he then agreed that such a policy and receipt should be embraced in the contract of insurance for which he was applying, and that he would accept them as parts thereof.

In said policy it was stipulated that the same should not go
22 into effect until the premium of seventy-four and $\frac{61}{100}$ dollars for the first year should be actually paid; and that upon payment of the premium there should be delivered a receipt therefor, signed by the defendant's president or secretary and countersigned by an authorized agent. Said receipt was signed by C. S. Mabie, the defendant's president, and before delivery it was countersigned by S. E. Starn, the defendant's soliciting agent, thereunto authorized. It acknowledged receipt of seventy-four and $\frac{61}{100}$ dollars as the first premium on said policy, subject to the terms of the contract and the conditions on the back of the receipt. One of the conditions on the back of the receipt was that if a note should be given for said premium, or any part thereof, and should not be paid at its maturity, the said policy should cease and determine. The plaintiff is hereby requested to produce said receipt at the trial of this cause and notified that upon her failure to do so, its contents will be proved by secondary evidence.

In fact, no note for seventy-four and $\frac{61}{100}$ dollars ever was given for the premium on said policy. Instead thereof, Thomas M. Lewis executed, endorsed in blank, and delivered to S. E. Starn for the defendant, his promissory note, dated March 4, 1899, whereby he promised that six months after said date he would pay to his own order at Fort Worth, Texas, the sum of thirty-seven and $\frac{30}{100}$ dollars, to-

gether with interest thereon at the rate of six per cent. per annum; and he promised said S. E. Starn by word of mouth that within a reasonable time he would pay to him the sum of thirty-seven and $\frac{30}{100}$ dollars, being the remaining portion of the premium. S. E. Starn accepted said note and oral promise in settlement of the first premium, subject to the conditions of the policy and premium receipt; and the defendant ratified his action in so doing. In exchange for said note and promise, the policy sued upon and the premium receipt above described were delivered to Thomas M. Lewis on to wit: March 18, 1899, and were accepted by him. Thereby it became a condition of the contract that if said note should not be paid at its maturity, the policy sued upon should cease and determine.

Nothing ever was paid upon account of either said note or said oral promise. Said note became due on September 7, 1899, several weeks before the death of Thomas M. Lewis, and it remaining then wholly unpaid, the policy in suit thereupon immediately ceased and determined by virtue of the provisions of the contract. When said note matured and for about two weeks before its maturity, it was in the hands of the Farmers' and Mechanics' national bank, in the city of Fort Worth, Texas, for collection, of which fact
23 Thomas M. Lewis was notified; but he did not pay the same.

8.

If, notwithstanding the non-payment of the premium, it shall be finally adjudged that the policy sued on constitutes a valid and subsisting obligation of the defendant, then the defendant will be entitled to have set off against the same, the amount of the note described in the foregoing section, which, subject to the matters and things hereinbefore set out, is a debt of Thomas M. Lewis and owned by the defendant. It will also be entitled to have deducted from the amount of said policy the sum of thirty-four and $\frac{34}{100}$ dollars being the balance, over and above said note, of the first year's premium remaining unpaid.

9.

In consideration of the premises, the defendant prays that it be hence discharged without day, and that it recover from the plaintiff its costs in this behalf.

MAURICE E. LOCKE,
Attorney for Defendant.

The foregoing has the following endorsement, to wit:—
#163 Law. Lula T. Lewis *vs.* Iowa Life Insurance Co. Defendant's third amended original answer. Filed 11 day of Jan'y 1901. J. H. Finks, clerk by J. B. Finks, deputy.

21 *Defendant's 1st Supplemental Answer.*

Filed January 11th, 1901.

In the Circuit Court of the United States, Northern District of Texas, at Fort Worth.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163.

To the honorable the judges of said court:

1.

Now by its attorney comes the defendant in the above-styled cause and under leave of the court files this its first supplemental answer, and so makes answer as follows to the first supplemental petition of the plaintiff:

2.

It demurs to said supplemental petition and says that the same is not sufficient in law to constitute a reply to its third amended original answer.

3.

It denies all and singular the allegations in said supplemental petition contained.

4.

In the policy sued upon is contained, and therein expressly made a part of the contract, a provision in words and legal effect as follows: "All agreements made by this company are signed by the president or secretary. This power will not be delegated. No other person can alter or waive any of the conditions of this policy, or issue permits of any kind, or make an agreement binding upon said company." S. E. Starn was neither the president nor the secretary of the defendant company, but was a soliciting agent of very limited authority. He never was authorized by the defendant to accept payment of the note of Thomas M. Lewis after its maturity. If he promised to do so, such promise was beyond the scope of his agency, contrary to his general instructions, and wholly without the defendant's knowledge or sanction. As soon as the defendant was informed that said note was past due and unpaid, and that its payment was proposed, the defendant telegraphed him not to accept the payment thereof. Neither the plaintiff nor Thomas M. Lewis ever made or tendered payment of said note. Whatever offer was made to pay the same was made by a stranger to the contract, whom said S. E. Starn had theretofore notified that he could not accept payment because the defendant had instructed him not to do so. If S. E. Starn ever promised to accept payment of said note as alleged by the plaintiff, said promise was wholly without consideration

and was withdrawn before the plaintiff acted upon it
25 Neither the plaintiff nor Thomas M. Lewis was led by such promise into any change of position.

Said note was for one-half of the first year's premium on said policy. When it matured, one-half of the first policy year had expired. Said note had then been fully earned; and the defendant had in law a perfect right to collect the same after its maturity, without thereby waiving the forfeiture of the policy.

5.

In consideration of the premises, the defendant prays as in its third amended original answer.

MAURICE E. LOCKE,
Attorney for Defendant.

The foregoing has the following endorsement, to wit:
#163. Lula T. Lewis *vs.* Iowa Life Insurance Company. Defendant's first supplemental answer. Filed 11 day of Jan'y 1901. J. H. Finks, clerk By J. B. Finks, deputy.

26 *Order Overruling Demurrers and Exceptions.*

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Texas, November Term, A. D. 1900.

LULA T. LEWIS
vs. } No. 163.
IOWA LIFE INSURANCE COMPANY.

FRIDAY, *January* 11, 1901.

On this day came on to be heard the pleadings in the above-styled cause upon demurrers and exceptions. Thereupon, the defendant duly presented its general demurrer and its special exceptions to the first amended original petition of the plaintiff, said demurrer and exceptions constituting sections 2, 3 and 4 of the defendant's third amended original answer, and its general demurrer to the plaintiff's first supplemental petition, said demurrer constituting section 2 of the defendant's first supplemental answer.

Thereupon the court having heard said demurrers and exceptions and the argument of counsel concerning the same, overruled each and all of said demurrers and exceptions.

To each of said rulings of the court the defendant then and there in open court duly took exception.

27 *Final Judgment.*

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Texas, November Term, A. D. 1900.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE CO. } No. 163.

JANUARY 12TH, 1901.

On this day this cause came on to be heard and thereupon came the plaintiff and defendant by attorneys and announced ready for trial; then came a jury of twelve good and lawful men, to wit: E. C. Dyche and eleven others, who were duly selected, empanelled and sworn according to law and after hearing the evidence, argument of counsel and charge of the court retired to consider of their verdict, and thereafter on the 12th day of January, returned into open court the following verdict, to wit:

"We the jury find for the plaintiff $3,000.00 principal of policy, $360, 12 % damages on $3,000., $500 attorneys' fees, $186. interest on $3,000 from January 1st 1900 to date.

E. C. DYCHE, *Foreman.*

"We the jury further find for the defendant and assess damages as follows: $37.00 face of note, $37.31 cash due as premium, $1.28 interest on $37.30 from March 4th 1899 to September 30th 1899.

E. C. DYCHE, *Foreman.*"

And the court having heard the verdict approves and orders same filed.

It is therefore ordered and adjudged that the plaintiff, Lula T. Lewis, do have and recover of and from the defendant, Iowa Life Insurance Company $3,000.00 principal of policy, $360.00 12 % damages on $3,000.00 $500.00 attorneys' fees, $186.00 interest on $3,000.00 from January 1st 1900 to date, aggregating the sum of four thousand and forty-six dollars, with interest from this date at the rate of six per cent. per annum; it is further ordered and adjudged that plaintiff, Lula T. Lewis recover of defendant all costs in this behalf incurred:

It is further ordered and adjudged that defendant, Iowa Life Insurance Company do have and recover of and from the plaintiff, Lula T. Lewis, the sum of $76.89 and that the judgment hereby decreed in favor of the said Lula T. Lewis in the sum of $4,046.00 be and the same is hereby credited with the amount of recovery now here adjudged in the said defendant's favor, to wit: with the sum of $76.89.

It is further ordered that the plaintiff may have execution
28 for the amount of her judgment against defendant with interest thereon, less the credit of $76.89 here decreed in defendant's favor and for all costs in this behalf incurred or expended.

It is further ordered that the officers of courts do have and recover of and from both parties respectively, the costs by them herein incurred, for which execution may issue.

29 *Order Overruling Motion for New Trial and Granting Time in Which to File Bill of Exceptions.*

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Texas, November Term, A. D. 1900.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE CO. } No. 163.

JANUARY 12TH, 1901.

On this day came on to be heard defendant's motion for a new trial, and the court after hearing the argument of counsel and considering same is of the opinion that said motion is not well taken;

It is therefore ordered and adjudged by the court that said motion be and the same is hereby overruled.

It is further ordered, that the defendant, Iowa Life Insurance Company, do have and they are hereby granted sixty days from and after January 19th, 1901, in which to prepare and file their bills of exception.

30 *Defendant's Bill of Exceptions.*

Filed February 15th, 1901.

In the Circuit Court of the United States for the Northern District of Texas, Sitting at Fort Worth.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163. Defendant's Bill of Exceptions.

1.

Be it remembered, that on the 11th and 12th days of January 1901, the above-styled cause came on to be heard before the court above named, to wit: before the Honorable Edward R. Meek, United States district judge presiding, and a jury duly empaneled and sworn, Messrs. Capps and Cantey of Fort Worth, Texas, appearing as counsel for the plaintiff, and Mr. Maurice E. Locke, of Dallas, Texas, appearing as counsel for the defendant.

Thereupon, after the pleadings had been settled, the following proceedings were had, and the following facts were proven and evidence introduced in so far as the facts and evidence are material to this bill of exceptions.

2.

Upon the issue as to whether the defendant had waived its right to proofs of the fact and cause of the death of the insured, the facts proven and evidence introduced were as follows:

The clause of policy sued upon, whereby the defendant promised to pay the sum insured, reads as follows: The Iowa Life Insurance Company "hereby promises to pay the sum of three thousand dollars to Lula T. Lewis (wife of the insured) if living; if not living, to the insured's executors, administrators or assigns (less any indebtedness of the insured or beneficiary to this company, together with the balance of any year's premium remaining unpaid), within sixty days after receipt and acceptance, at the company's office in Chicago, Illinois, of satisfactory proofs of the fact and cause of death, within the terms of this policy, of the said Thomas M. Lewis of Fort Worth, county of Tarrant, State of Texas (the insured under this policy), provided such death shall occur on or before 12 o'clock noon of the fourth day of March A. D. 1900."

The above clause is all the contract contains on the subject of proofs of death. There was no testimony concerning the furnishing or receipt of proofs of death of Thomas M. Lewis, except the
31 following: R. E. Sackett, secretary of defendant testified that "the Iowa Life Insurance Company never received proofs of the death of Thomas M. Lewis prior to the institution of this suit." Request was made of S. E. Starn for blank forms of proofs of death and Capps & Cantey wrote to the defendant as herein set forth.

The application for the policy sued upon was submitted to the defendant through its agent S. E. Starn. The nature and extent of S. E. Starn's authority, as shown by the evidence, will be exhibited in section 4 of this bill. Over the defendant's objection duly made, and its exception to the ruling of the court duly taken, upon the ground that no authority had been shown in S. E. Starn to act for the defendant in the matter of proofs of death, it was proven that a few days after the death of the insured, representatives of the plaintiff requested S. E. Starn to furnish them blanks upon which to make out proofs of the fact and cause of the death of the insured. Mr. Starn declined to furnish such blanks, and as his reason for such declination, stated that he did not consider Mr. Lewis insured in the defendant company, as his policy was lapsed. R. E. Sackett, secretary of the defendant company, testified that the defendant has blank forms of proofs of death, which it requires claimants under its policies to use in making out such proofs, and which it furnishes upon request for that purpose.

On January 4, 1900, Messrs. Capps & Cantey, who were then and thereafter the *the* attorneys of the plaintiff, wrote to the defendant a letter reading as follows:

Letter-head of Capps & Cantey.

"FORT WORTH, TEXAS, *January 4th*, 1900.

Iowa Life Insurance Co., Chicago, Ills.

GENTLEMEN: Concerning your policy No. 30140 issued to Thos. M. Lewis for $3,000, registered March 4th 1899, with Lula T. Lewis, Mr. Starns has stated to us that the company does not recognize any liability under the policy by reason of the death of Thos. M. Lewis and has refused to furnish proofs of the death. We take it, of course,

that this is the stand which the company has taken in the matter and that he does so through advices from you, though we are of the opinion that it is perhaps due to Mr. Starnes and you as well that we confer direct with the home office, and have the declination to recognize the liability or furnish proofs of death proceed from that source. We have been retained to sue on the policy and will
32 appreciate it if you will by return mail advise us of what stand you have taken in the matter.

Thanking you in advance for prompt attention, we are

Yours truly,

(Signed) CAPPS & CANTEY."

Dic. I. H.

To this letter the defendant, through its secretary, R. E. Sackett, replied on January 15, 1900, by a letter reading as follows:

Letter-head of Iowa Life Insurance Co.

"CHICAGO, *Jan. 15th*, 1900.

Messrs. Capps & Cantey, Forth Worth, Texas.

GENTLEMEN: We beg to acknowledge receipt of your favor of 4th inst., the same being in relation to a certain insurance policy issued by this company upon the life of one Thomas M. Lewis and numbered 30140.

In reply we beg to inform you that this is a matter which should properly have the attention of our general counsel, and as he has been ill for some days, and is just now leaving the city for a trip of a week or ten days we shall have to defer making further reply to your communication until his return.

Very truly yours,

(Signed) R. E. SACKETT, *Secretary.*

P."

On January 27, 1900, this action was brought in the district court of Tarrant county, Texas.

On January 31, 1900, the defendant, through E. L. Barber, its general counsel, made further reply to Capps & Cantey's letter of January 4th by a letter reading as follows:

Letter-head of Iowa Life Insurance Co.

"JAN. 31ST, 1900.

Messrs. Capps & Cantey, Fort Worth, Texas.

GENTLEMEN: Your letter of January 4th to the Iowa Life Insurance Company before me, and to which I respond simply as a matter of courtesy.

How any one could imagine that Mr. Starnes would have anything to do with furnishing or refusing to furnish proofs of death of anybody under any circumstances, connected with this company, I do not understand. I would state that it does not appear by the books of the company that Thomas M. Lewis was a policy-holder in

said company at the time of his alleged death. We are neither called upon to deny or admit any liability by reason of the fact that he may at some time have been a policy-holder in this
33 company, that I am aware of. If you or any other person desires blank forms of this company upon which proofs of death are usually made, we will furnish you them with the utmost pleasure, not for the purpose of furnishing proofs of the death of Thomas M. Lewis nor any other person, but simply as a matter of courtesy, and you will have the right to make such use of them as you desire. This, we never refuse to any person and we expressly state that in furnishing such blanks, we neither admit or deny any liability of any supposed or alleged claim in the hands of the parties asking for such blanks.

Yours, &c.,

(Signed) E. L. BARBER,
General Counsel."

No blanks for proofs of death were sent to Capps & Cantey by the defendant with either of its letters above copied or at any time.

Except for the evidence as to the extent of S. E. Starn's authority, the foregoing is a full and complete statement of all the evidence bearing upon this issue.

3.

Upon the issue as to whether the policy sued upon had ceased and determined before the death of the insured, the facts proven and evidence introduced were as follows, saving for section 4 *post*, the evidence upon the question of S. E. Starn's authority:

The first sentence of the policy sued upon, appearing upon the face thereof, reads as follows: "The Iowa Life Insurance Company, in consideration of the stipulations and agreements in the application herefor (a copy of which is hereto attached), and of the provisions and requirements upon the next page of this policy, all of which are a part of this contract; and in consideration, also, of the payment of seventy-four dollars and sixty-one cents, being the premium hereon for the first year, hereby promises to pay the sum of three thousand dollars, to Lula T. Lewis (wife of the insured) if living if not living, to the insured's executors, administrators or assigns (less any indebtedness of the insured or beneficiary to this company, together with the balance of any year's premium remaining unpaid), within sixty days after receipt and acceptance, at the company's office in Chicago, Illinois, of satisfactory proofs of the fact and cause of death, within the terms of this policy, of the said Thomas M. Lewis, of Fort Worth, county of Tarrant, State of Texas (the insured under this policy), provided such death shall occur on or before 12 o'clock noon of the fourth day of March, A. D. 1900."

Upon the second page of the policy is a provision reading as fo
lows, it being one of the provisions referred to in the sentence
34 above quoted from the face of the policy: "This policy is a contract made and to be performed in accordance with the laws of the State of Iowa, and shall be construed only in accordance with the charter of said company and the laws of said State, and

shall not go into effect until the premium hereunder, or a semi-annual or quarterly installment thereof, shall have been actually paid during the lifetime and continuance in good health of the insured. Upon payment of the premium there shall be delivered a receipt signed by the president or secretary, and countersigned by an authorized agent."

Another provision appearing upon the second page of the policy reads as follows: "All agreements made by this company are signed by the president or secretary. This power will not be delegated. No other person can alter or waive any of the conditions of this policy, or issue permits of any kind, or make an agreement binding upon said company."

The policy sued upon is of the kind designated by the defendant as a "ten-year convertible term stock" policy. It is dated March 13, 1899. The annual premium thereon is $74.61.

The policy sued upon was issued in pursuance of a written and printed application therefor made by the insured under date of March 4, 1899. Said application requests the issuance of a "ten-year convertible term stock" policy, and states that the premium of $74.61 is to be paid annually. It concludes with a recital as follows: "A note for premium of $74.61 has been paid under this application, to make the insurance binding from the date hereof, on condition that if the risk is not assumed by the company this sum is to be returned, in accordance with the receipt given as voucher for said payment."

On March 4, 1899, the insured executed and delivered to S. E. Starn, as agent of the defendant, in partial settlement of his premium his note reading as follows:

"$37.30. MARCH 4TH, 1899.

Six months after date I promise to pay to the order of myself thirty-seven $\frac{30}{100}$ dollars, at Ft. Worth, Texas value received, with interest at 6 per cent. per annum.

T. M. LEWIS, M. D."

Which he endorsed in blank as follows: "T. M. Lewis, M. D."

On March 5, 1899, S. E. Starn transmitted to the defendant the insured's said application and note with a letter, which in so far as it is material to this bill of exceptions, reads as follows: "I herewith hand you application of Thomas M. Lewis for $3,000.00,
35 10-year term con. stock. Also his note to cover settlement."

These papers were received by the defendant March 8, 1899 at its office in Chicago.

The application was accepted by the defendant March 13, 1899. The defendant did not signify to Thomas M. Lewis its acceptance of his application in any way other than by making out and forwarding to its agent, S. E. Starn, for delivery the policy sued upon, and the premium receipt hereinafter mentioned, which it did on March 16, 1899.

On March 18, 1899, S. E. Starn countersigned the premium receipt, and delivered it and the policy sued upon to the insured.

The policy and receipt were delivered at the same time and were received by the insured.

Said premium receipt reads as follows:

"Iowa Life Insurance Company.

Chicago office.

Received $7.61, being the first annual premium due March 4, 1899, under policy No. 30140 on the life of Thomas M. Lewis subject to the terms of the contract and the conditions on the back hereof.

Read the notice to policy-holders on the back of this receipt.

This receipt is not binding unless it is countersigned by

(Signed) C. E. MABIE, *President.*

S. E. STARN,
Agt. Ft. Worth, Tex."

"Countersigned this 18th day of March 1899.

S. E. STARN."

(On back of receipt.)

"For terms of mutual agreement, see application and policy.

Notice to Policy-holders.

This receipt, to be valid, must be signed by the President or secretary of the company, and in exchange therefor, cash or its equivalent, be given by the holder of the policy, on or before date payment is due and when payment hereon is made to an authorized agent or collector, such agent or collector must countersign at the date of payment to him.

If note be given for the payment of the premium hereon or any part thereof, and same is not paid at maturity, the said policy shall cease and determine."

For the first annual premium, the insured gave the above-described note for $37.30 and agreed to perform professional services for S. E. Starn to the value of the remaining $37.31. Starn was to furnish professional work to be done by Dr. Lewis in the examination of applicants for insurance and otherwise, and Dr. Lewis was to
36 do it and let Starn have the fees. No work ever was done and no money ever was paid to S. E. Starn or the defendant in pursuance of this verbal arrangement. Except that the note was given and the verbal agreement made, as just above stated, the defendant never received, and the insured never paid, anything upon account of the premium for the policy sued upon. S. E. Starn testified that before the issuance of the policy he reported to the defendant his agreement with Dr. Lewis concerning the payment of the premium.

The policy sued upon is in the form always used by the defendant in making contracts of insurance of the kind designated by it "ten-year convertible term stock" contracts. At the time of issu-

ing said policy it was the defendant's universal practice to issue with its policies premium receipts in form like the one delivered to the insured in this case.

The defendant never sold or transferred the note received by it from the insured, but continued to be the owner thereof until the time of the trial. Some time before its maturity, the defendant sent said note to S. E. Starn for collection. S. E. Starn deposited it for collection with the Farmers' & Mechanics' National Bank of Fort Worth, Texas, on August 24, 1899. The bank held the note until September 25, 1899, when it returned it unpaid to S. E. Starn. The manager of its collection department testified that it would have accepted payment of the note at any time before its return to S. E. Starn, and that it had received no instructions from S. E. Starn with reference to the acceptance of payment after maturity.

S. E. Starn made no effort to collect the note before its maturity except that he deposited it in the bank for that purpose, nor had he up to that time furnished any professional work for the insured to do, in pursuance of the verbal agreement, or made any effort to get the insured to do any work, or pay any money on account of such agreement.

About September 29th 1899 S. E. Starn called at the residence of the insured in Fort Worth (he being at the time confined to his bed from illness, the nature of which was typhoid fever, and from the effects of which he died October 7th) and there had an interview with the plaintiff and the insured. Concerning this interview the evidence is conflicting. The evidence introduced by the plaintiff tended to prove that Starn stated that he had called for the purpose of collecting the note, that the plaintiff promised that it should be fixed up at once, and that Starn stated that it could be paid at any time before the date on which he was required to make his monthly report, to wit: October 1st following. The evidence was sufficient to have supported a verdict that this was a fact. Mr. Starn denied that he called for the purpose of collecting the note, and denied that he had made the statement that the note could be paid at any time before October 1st, or the date on which he would make his report to the defendant.

37

Dr. Green, one of the physicians attending the insured, met Mr. Starn as the latter was coming out of the plaintiff's house. Starn inquired of the doctor if he intended returning to the city after seeing his patient. Being answered in the affirmative, Starn stated that he would wait in the doctor's buggy and go uptown with him. While the doctor was in the house the plaintiff requested him to call on J. R. Reeves at the latter's pharmacy and ask him to pay off the insured's note for them, held by Starn; the doctor agreeing to do so. Dr. Green and S. E. Starn rode in the former's buggy from the plaintiff's residence to the business portion of the city of Fort Worth. Mr. Starn left the buggy as soon as the business portion of city was reached and Dr. Green drove immediately to Reeves' pharmacy and indicated to him the plaintiff's request. Mr. Reeves agreed to pay off the note as requested, and the doctor agreed to notify Starn.

Concerning the conversation which ensued between Dr. Green and Mr. Starn on the way to town, the evidence is conflicting. Dr. Green testified that Mr. Starn stated that he had called at the plaintiff's house to collect the note. Mr. Starn denied having made such statement.

Some time during the afternoon of this day Dr. Green notified S. E. Starn that J. R. Reeves, the druggist, would pay off the note. Concerning the conversation which occurred between Dr. Green and Starn immediately following this notification, the evidence is conflicting. Dr. Green testified that Starn said he would go down to the pharmacy for that purpose; that some statement was made about his going to Reeves' pharmacy to get the money that evening, and that Starn said it would not be necessary, that he would go down by nine or ten o'clock the next morning. S. E. Starn testified that he stated to Dr. Green that he would call and see Mr. Reeves the next morning.

The night following this interview Mr. Starn sent to the defendant a night-rate telegram, reading as follows:

"FORT WORTH, TEXAS, *September* 29, '99.

Iowa Life Ins. Co., Chicago:

Dr. T. M. Lewis offers to pay premium today. Very sick. Shall I receive it?

S. E. STARN."

38 The next morning September 30th 1899, the defendant through its secretary telegraphed to S. E. Starn as follows:

"To S. E. Starn, 615 Grove St., Fort Worth, Texas:

Do not accept payment on note due September 4th. Answer.

R. E. SACKETT, *Sec.*"

On the same day defendant wrote to S. E. Starn a letter reading as follows:

"Mr. S. E. Starn, 615 Grove St., Fort Worth, Texas.

DEAR SIR: We are in receipt of your telegram as follows: 'Dr. T. M. Lomis offers to pay premium today. Very sick. Shall I receive it?' to which we replied as follows: 'Do not accept payment of note due September 4th. Answer.' We presume this telegram refers to policy No. 30140, Thomas M. Lewis $3,000, convertible term, premium $37.60, upon which note was received at this office in the sum of $37.30, due September 4th, 1899, and which was sent to you for collection.

Very truly yours, R. E. SACKETT, *Sec.*"

Some time in the morning of September 30th 1899, S. E. Starn called at the pharmacy of J. R. Reeves and Mr. Reeves informed him that he had the money to pay off the Lewis note and had been waiting for him. Mr. Starn thereupon informed Mr. Reeves that he could not accept the payment of the note because he had received a telegram from the company instructing him not to do so. Later

in the day Mr. Reeves and Dr. Green called on Mr. Starn and Reeves made a tender of the amount of the note, which Starn refused to accept. Reeves kept the money he tendered to Starn and did not pay or deliver same to the plaintiff or the insured or to any one for them and had no interview with the plaintiff or the insured.

On the same day Starn telegraphed the defendant as follows:

"FORT WORTH, TEXAS, *September 30th*, '99.

Iowa Life Ins. Co., Chicago:

I have refused payment on Lewis policy this 10.30 a. m.

S. E. STARN."

The only testimony with regard to any consideration for the promise claimed by the plaintiff to have been made to her by S. E. Starn that he would accept payment of the note, is the following passage from the cross-examination of the plaintiff:

39

Q. Did you pay Mr. Starn anything?

A. No sir.

Q. He simply told you he had come to see the doctor about his note, and that it ought to be fixed up, and you said you would attend to it?

A. Yes sir.

Q. That is all that occurred between you?

A. Yes sir.

The attention of the plaintiff was not directed to the fact that she was being questioned concerning a consideration for the extension of the time for payment of note other than is indicated by the questions put to her.

At the request of the defendant, S. E. Starn returned to it the note of the insured, which thereafter continued in the defendant's possession. The defendant never offered to return the note to the insured and never before the death of the insured, did anything in the way of an affirmative forfeiture or cancellation of the policy, and no communication passed between the defendant and S. E. Starn regarding said note between the transmission of the note to Starn for collection and Starn's above-quoted telegram of September 29, 1899.

Except for the evidence upon the question of the extent of S. E. Starn's authority the foregoing is a full statement of all material facts upon the issue of the forfeiture of the policy sued upon for non-payment of the premium note, and the waiver of such forfeiture.

4.

Upon the question as to whether S. E. Starn had power to waive proofs of death and power to waive the forfeiture of the policy for non-payment of the premium note, the facts proven and evidence introduced were as follows:

One of the provisions of the policy reads as follows: "All agreements made by this company are signed by the president or secre-

tary. This power will not be delegated. No other person can alter or waive any of the conditions of this policy, or issue permits of any kind, or make an agreement binding upon said company." S. E. Starn was neither the president nor the secretary of the defendant company. He was an agent of the defendant, and at the dates of all the transactions involved in this litigation, he was acting as such agent by virtue of a written contract between himself and the defendant, made October 1, 1898. The portions of said contract material to this bill of exceptions read as follows:

40 "The said party of the first part doth hereby constitute and appoint the said party of the second part its agent to solicit applications for life insurance throughout the State of Texas and to collect the first year's premiums thereon, and with full power and authority to appoint agents, under the supervision of and subject to the acceptance of said company, in any portion of the State of Texas not exclusively granted to some other agent under contract. It is hereby understood that the said party of the second part is not given exclusive control of the territory above mentioned, beyond the right and privilege to solicit business and appoint agents to do so under the supervision and approval of said party of the first part." * * *

"The said party of the first part agrees to allow the said party of the second part, as a remuneration for his services, the following commissions and renewals on all business procured by himself and through agents appointed by him, viz:

List of Commissions on First Premiums.

* * * * * * *

Convertible-term policies less than $5,000 65 %.

* * * * * * *

A renewal commission of seven and one-half (7½) per cent. shall be allowed on ten annual renewal premiums on all business except convertible-term and renewable-term policies less than $5,000 which shall bear a renewal of 5 %." * * *

"Commissions shall accrue only as premiums are paid in cash to the said party of the first part. In all cases where notes or other obligations are accepted in payment for any premium, no commission shall accrue or become due until said notes are paid in cash to said party of the first part. If premiums are payable quarterly commission shall be computed quarterly on quarterly premiums; if payable semi-annually commission shall be computed semi-annually on semi-annual premiums. Commission shall in no case be allowed upon any part of a premium before the same is collected." * * *

"The party of the second part shall not make, alter or discharge any contracts, or waive forfeitures, grant permits, or bind the said party of the first part in any manner not herein expressly authorized." * * *

"The said party of the second part agrees to submit to and abide by all rules and regulations of said company." * * *

"A report shall be made upon the fifth day of each month on the business done during the preceding month, and the amount due the said company for first premiums or renewals collected by
41 the said party of the second part shall then be reported to said company."

R. E. Sackett, secretary of the defendant, testified that the defendant company had printed rules and instructions which it regularly issued to its agents. S. E. Starn and R. E. Sackett testified that at the times of all the transactions involved in this litigation, the agent S. E. Starn had no authority other than that conferred by said contract and said rules and instructions. The portions of said rules and instructions material to this litigation are as follows:

"Authority of agents.—Agents are empowered to solicit and receive applications for policies of life insurance, to collect the first premiums upon such applications and to deliver policies when the required premiums have been paid thereon; also to collect renewal premiums upon receipts signed by the president or secretary, and sent to them for that purpose. Agents are not authorized to collect any renewal premium after the day on which the same becomes due, except in accordance with special instructions from the company in each individual case. No policy will be binding upon the company until the premiums due shall have been actually paid.

"Agents are not authorized to make, alter or discharge contracts, waive forfeitures, name an extra rate for special risks, grant permits or bind the company in any manner whatsoever. No agent is authorized to incur any expense against the company except by special authority.

"All agreements or obligations of the company are signed by its president or secretary.

"All moneys of the company, collected on its account by the agent, are held by him in trust, and must be kept separate and intact and promptly remitted by him in accordance with his contract and the rules and instructions of the company."

"Agents' reports.—A full report of all business done by agents during any month shall be made to the company on or before the fifth day of the succeeding month, upon the regular printed report blanks to be furnished by the company, at which time remittance shall be made covering all policies mentioned in said report, together with any renewal collections which may have been made, making such deductions only as are allowed under the contract. New policies may be delivered if paid for within thirty days from the date when received by the agent, and a re-examination may be waived, provided the insured is in good health; but the foregoing permission may be countermanded in any case. A receipt covering
42 the first premium will be sent with every policy. This receipt must be countersigned by the agent designated, and when delivered to the applicant the amount named in the receipt must be accounted for by the agent in his next report. Great care should be exercised by agents in delivering these receipts, as they will be held to strict account as to their disposal."

"Premiums and commissions.—Agents are authorized to receive premiums not overdue, only, however, when they have the company's regular receipts, signed by an officer of the company, to give in exchange for such premiums. Agents are not authorized to write receipts for premiums.

"Agents are prohibited from delivering any renewal receipt and from accepting the premium for same, after the day on which said premium falls due, unless the person whose life is insured is, at the time of such payment, in good health, of temperate habits and in insurable condition, evidence of which must be furnished to and accepted by the company before the receipt for premium is delivered. Interest must be collected on all overdue premiums received, and reported in account under 'interest.'

"Commissions are to be charged only as premiums are paid in cash to the company."

"Restoration of lapsed policies.—When a policy has lapsed through non-payment of premium, note or interest, the agent has no authority to restore it. The company reserves the right to decide in all such cases, and always requires satisfactory proof of the non-impairment of the risk. If a policy shall have been lapsed for more than thirty days, a new medical examination may be required, the fee for which must be paid by the policy-holder or agent. Within thirty days from date of lapse a certificate of health upon one of the company's blanks may be accepted in lieu of a new examination, at the option of the company."

R. E. Sackett, secretary of the defendant company, testified that on September 29th and 30th 1899, the above-mentioned written contract between the company and its agent Starn was still in force, and that it had not in any way been modified or added to before said dates. He testified that the defendant company never at any time in any way authorized said S. E. Starn to receive payment of the above-mentioned note of the insured after its maturity. He testified that the defendant company never accepted payment of past-due premiums or past-due premium notes upon account of policies insuring the lives of persons known by the company to be in bad health at the time of acceptance of such payment, and that it never per-
43 mitted any of its agents to accept payment under such circumstances, and never kept money so paid with knowledge of such circumstances. He testified that no duties ever had been imposed or any authority conferred upon S. E. Starn with relation to demanding or waiving proofs of death, or with reference to deciding whether the defendant was or was not liable to pay any specified policy of insurance. He testified that the above-mentioned contract covers all the duties and authority of S. E. Starn as an agent of the defendant. S. E. Starn testified that the defendant never, by way of contract, letter, rules, or otherwise, gave him any general instructions about receiving payment of past-due notes, except such instructions as were contained in his contract and the printed rules and instructions above mentioned, and that what appears in said contract and printed rules and instructions constituted the sum total of his authority. He testified that the defendant never at any time

wrote him to accept payment of the note of the insured after maturity.

At the lower left-hand corner of the application for the policy sued upon appear the following words, all being a portion of the printed blank, except the name of the subscribing agent:

"This risk is approved and recommended by

____ ____,
Soliciting Agent.

(Signed) S. E. STARN,
General Agent."

A copy of the application, including said words, was attached to the policy. S. E. Starn's letter of March 5, 1899, to the defendant company, transmitting the application of Dr. Lewis for the policy, was written on a letter-head of the defendant company, upon which the following words had been printed in red ink:

"S. E. Starn, dist. manager,
615 Grove street,
Ft. Worth, Texas."

It was not shown that this letter-head or any similar one ever had been seen by the insured or the plaintiff.

The telegraphic and mail correspondence between S. E. Starn and the defendant regarding payment of the note has been copied at length in section 3 above, and need not be recopied here.

S. E. Starn testified that if he had collected the note of the insured he would have retained and would have had the right to retain, his commission of 65 % thereof, and sent the remaining 35 % to the defendant, and that if he had collected anything on account of the verbal contract between himself and Dr. Lewis, he would have retained, and would have had the right to retain, 65 % of the amount collected, and sent the remaining 35 % to the defendant.

44 The foregoing, together with the correspondence between S. E. Starn and the defendant, quoted in section 3 above, constitutes a full statement of all material evidence introduced upon the question of the extent of S. E. Starn's authority to act for the defendant.

5.

Except by the institution of this action, the plaintiff never at any time made demand upon the defendant for payment of the sum due her on account of the contract of insurance. She had, however, made such requests for blank forms for proofs of death and received such responses to her requests, as are set forth in section 2 of this bill.

6.

Exception No. 1.

While the witness S. E. Starn was on the stand, counsel for the defendant asked him the following question: "When you took this application and delivered this policy, what conversation, if any, did

you have with Dr. Lewis about the receipt that you gave him?" To this question counsel for the plaintiff objected, upon the ground that the matter inquired about was irrelevant and immaterial and could not affect the terms of the contract. The court announced that he thought the objection well taken. Thereupon counsel for the defendant offered to prove by the witness upon the stand that before the delivery of the policy and receipt, the form of contract which Dr. Lewis was to receive was fully discussed between the witness and Dr. Lewis, and it was agreed and understood that as a part of his contract of insurance, he should receive a receipt in the form of the premium receipt that was delivered to him, and which appears in evidence. The court refused the offer, and sustained the objection to the question; to which ruling of the court the defendant then and there duly took exception.

7.

Exception No. 2.

The court in its charge to the jury, after summarizing the evidence, proceeded as follows:

"The first question to dispose of is as to whether or not the provision as to the payment of the note at maturity—it being provided on the back of the receipt for the note that the policy shall cease and determine if the note is not paid at maturity, is a provision of the contract entered into by and between the Iowa Life Insurance Company and Thomas M. Lewis; whether Lewis and his beneficiary are to be bound by that provision on the back of the receipt as a part of the policy of insurance.

"The question is not without its difficulties, but from the light which I have before me, and after listening to the argument
45 of counsel, I am of the opinion that the provisions on the back of the receipt are not a part of the contract; that the contract by its own explicit terms, is wholly included in the policy—the life insurance proper, and in the application for such life-insurance policy, which, by the terms of the policy is made a part of the contract. This is recited to be the case in the face of the policy and on the back of the receipt itself. Under the provisions and stipulations of these two instruments, by the passing of the insurance policy to the deceased and the note of the deceased and his promise to pay to the insurance company, the minds of the insurance company and the deceased met, upon the conditions and provisions of the note, contract and the application for the insurance, which made a part of the contract. In the opinion of the court there was no meeting of the minds, or agreement between the parties as to the provision upon the back of the receipt. Such provision is nowhere noted in the face of the contract of insurance; it is nowhere noted in the application for the insurance, and the only place it is found is upon the back of the receipt, no reference being made to any such provision elsewhere.

"Even if this provision were considered a part of the contract entered into between the parties, yet it is such a provision as to be

taken advantage of would require affirmative action on the part of the company; that is to say, when the note was not paid at maturity the company should have within a reasonable time thereafter notified the insured that in view of the fact that his note given in part payment of the premium upon the policy had not been paid, the policy, which was issued in consideration of such note, ceased and determined. There is no evidence that any such action was taken on the part of the insurance company. It has been held by authority of weight and respectibility that this would be the necessary steps for the insurance company to take, were the provision which is contained on the back of this receipt, contained in the face of the note given by the insured to the company in part payment of the premium. I can understand why the insured should be bound by provisions incorporated in the face of his note, because that note bears his signature and in so far as it bears his signature it must be his act, and therefore, he himself has agreed to the provision. He signs his own note understandingly and wittingly. Even in that case, however as I have stated, the law as it has been held by courts of weight and authority, is that the company must notify the insured of the non-payment of the note and that the policy, because of such non-payment has ceased and determined, and that they will no longer be liable thereunder.

46 "Therefore, on the first branch of this case, or rather the first question, the court has reached the conclusion that the fact that the assured did not upon the maturity of the note pay it, does not lapse the policy, and that it was in effect thereafter. It seems to me that the attitude of the company itself bears out this conclusion, because it being the possessor of the note, with knowledge of the date of its maturity, placed it in the hands of a local bank for collection and permitted it to remain there after the date of its maturity, with the bank making its usual and customary efforts to collect the same. This was done with the tacit consent of its agent, Mr. Starns, to whom the note was sent for collection. This note, as has also been said by counsel, is of the highest negotiable character and needed only the solvency of the individual whose name was appended thereto, to make it as good as currency."

To said charge of the court the defendant then and there in open court before the jury retired to consider of its verdict, duly excepted upon each of the several grounds next hereinafter stated, to wit:

(*a.*) It excepted to so much of said charge as relates to the question of whether the provision for forfeiture upon the back of the receipt given for the premium is a part of the contract and binding upon the plaintiff; because in law said provision is a part of the contract and is binding upon the plaintiff.

(*b.*) It excepted to so much of the charge of the court as instructs the jury that if the provision for forfeiture on the back of the receipt given for the premium were a part of the contract, it would be necessary for the defendant to take some affirmative action in forfeiting the policy, and to notify the insured that forfeiture was claimed; because said provision is a part of the contract and entitles the defendant to have the policy considered forfeited by virtue of the non-

payment of the premium note at its maturity, without affirmative action on the defendant's part; and further because it appeared from the undisputed evidence that the premium note represented a little less than half of the amount of the first annual premium and that at the maturity of the note a little more than half of the first policy year had expired, and that therefore the note had been fully earned, and the defendant was entitled to keep it and collect it, and at the same time enforce forfeiture for its non-payment at maturity.

8.

Exception No. 3.

47 The court in its instruction to the jury, after charging upon the subject of forfeiture, as shown in exception No. 2, proceeded as follows:

"There is a provision in the face of the contract of insurance that satisfactory proof of the fact and cause of the death of the insured must be received and accepted at the company's office in Chicago, Ills., under certain conditions and within the terms of the policy, before its liability will attach.

"I have narrated in a somewhat desultory manner, the evidence as to furnishing proof of loss, and it seems to me that under the terms of the contract of insurance, the company is made the judge of what shall be satisfactory proofs of death. The company says that upon receipt of satisfactory proof of the fact and cause of death, its liability will attach, in event it is liable under other conditions of the policy. It must determine for itself what it will accept as satisfactory proof. Therefore it best knows what its regulations are as to proof of death. The attitude of the company in this respect (and I am not referring to the attitude of its agent Mr. Starns in Ft. Worth) but of the secretary and general counsel of the company, who unquestionably acted as its full representatives and agents; their attitude on the matter of proof of loss is such as to here in this case estop the company from setting up the absence of this proof of loss as a defense—setting up that proofs of loss have not been furnished, and that therefore, their liability does not attach. When they are called upon to say whether or not they deny liability under this policy, and if not, to permit the representatives of the deceased to make proofs of loss, they practically refused to furnish blanks for that purpose, and the general counsel says there is no such policy in effect on the books of the company. Construing the statement of their letters in a fair way, they are tantamount, to my mind, to refusing liability on this policy, and certainly one would feel it futile to go ahead thereafter and make proof of loss under the circumstances the beneficiary did, not knowing what the company would construe as satisfactory proof. It seems to me as a question of law, that the insurance company should be estopped from here setting up that provision of the policy as a defense to this action."

To said charge of the court the defendant then and there in open court, before the jury retired to consider of its verdict, duly excepted, upon the ground that there was no evidence before the court

proper to serve as the foundation for a verdict that the defendant had waived its right to require the furnishing of proofs of death in accordance with the contract, or been estopped from enforcing such right.

48 9.

Exception No. 4.

The court in its instruction to the jury, after charging as shown in exception Nos. 2 and 3, proceeded as follows:

"This being the view of the court, it will be your duty to return a verdict for the plaintiff for the face of the policy, which is three thousand dollars, and also interest thereon at the rate of six per cent. per annum from the first day of January 1900, and also 12 per cent. penalty on the three thousand dollars—not on three thousand dollars and six per cent. added thereto, but 12 per cent. penalty on three thousand dollars. Also for reasonable attorneys' fees for the prosecution of this suit, basing your judgment of course, on the evidence which has been introduced on that point.

"This, therefore, leaves to the jury but one question to determine, this the fixing of reasonable attorneys' fees for the prosecution of this suit."

To said charge of the court the defendant then and there in open court, before the jury retired to consider of its verdict, duly excepted, upon each of the several grounds next hereinafter stated, to wit:

(*a.*) It excepted to so much of the charge as instructs the jury to return a verdict for 12 per cent. damages and reasonable attorneys' fees; because the statute, article 3071 of the Revised Statutes of Texas, which alone purports to require such payment, is not a valid law, and binding upon the defendant, for the reason that it is in contravention of the fourteenth amendment to the Constitution of the United States, in that it denies to the defendant, which is a person within the jurisdiction of the State of Texas, the equal protection of the law.

(*b.*) It excepted to so much of the charge as instructs the jury to return a verdict for 12 per cent. damages and reasonable attorneys' fees; because there was no evidence before the court showing that the plaintiff at any time before or after the institution of the suit, or otherwise than by the mere fact of suit, made demand upon the defendant for the payment of the amount due under the policy sued upon.

(*c.*) It further excepted to so much of the charge as instructs the jury to return a verdict in favor of the plaintiff for reasonable attorneys' fees for the prosecution of the suit; because there was no pleading or evidence before the court showing that the plaintiff had paid any attorneys' fees, or become liable to pay any attorneys' fees; or if she had paid them, or become liable to do so, to what amount.

49 10.

Exception No. 5.

Before the case was submitted to the jury the defendant, in writing, requested the court to give to the jury its special charge No. 1, in words as follows:

"You are instructed that under the undisputed evidence the plaintiff is not entitled to recover, and that therefore you should return a verdict for the defendant."

The court refused to give said charge and to such refusal the defendant in open court duly notes its exception, after the jury had received the charge of the court, and before it retired to consider of its verdict.

11. The defendant presents the foregoing as its bill of exceptions in the above-styled cause, and prays that it be settled and allowed, and duly signed and made a part of the record of the cause.

MAURICE E. LOCKE,
Attorney for Defendant.

The time for the settling and allowance of the defendant's bill of exceptions having been extended by order of court made during the term and immediately upon the conclusion of the trial, and the period of such extension not having yet elapsed, and the foregoing bill of exceptions having been examined and found correct, the same is hereby settled, allowed and ordered filed as a part of the record of the cause, this the 13 day of February A. D. 1901.

EDWARD R. MEEK,
United States District Judge, Presiding.

The foregoing has the following endorsement, to wit:

163 Lula T. Lewis *vs.* Iowa Life Insurance Company. Defendant's bill of exceptions. Filed 15 day of Feb. 1901. J. H. Finks, clerk by J. B. Finks, deputy.

50 *Defendant's Petition for Writ of Error and Allowance Thereof.*

Filed February 15th, 1901.

In the Circuit Court of the United States for the Northern District of Texas, Sitting at Fort Worth.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163.

Defendant's petition for a writ of error.

To the honorable the judges of the circuit court of the United States for the northern district of Texas:

Now by its attorney comes Iowa Life Insurance Company, the defendant in the above-styled cause, and shows that on to wit: January 12, 1901, the said circuit court entered a judgment against it in said cause, in pursuance of the verdict of the jury therein rendered,

and further shows that in said cause the defendant claimed that a law of the State of Texas, to wit: article 3071 of the Revised Statutes of said State, was in contravention of the Constitution of the United States, and that its said claim was denied by the court.

Wherefore, feeling itself aggrieved by said verdict and judgment, the defendant files with this petition an assignment of errors complained of, and prays for an order of court, allowing it to prosecute a writ of error to the Supreme Court of the United States, and fixing the amount of security which the defendant shall give upon said writ of error, and providing that upon the giving of a supersedeas bond for said amount, all further proceedings in said circuit court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

MAURICE E. LOCKE,
Attorney for Defendant.

Granted, this the 15th day of February A. D. 1901.

EDWARD R. MEEK,
United States District Judge, Northern District of Texas.

The foregoing has the following endorsement, to wit:
163 Lula T. Lewis *vs.* Iowa Life Insurance Company. Defendant's petition for a writ of error. Filed 15 day of Feb. 1901. J. H. Finks, clerk by J. B. Finks, deputy.

51 *Order Allowing Writ of Error and Fixing Bond.*

Filed February 15th, 1901.

In the Circuit Court of the United States, Northern District of Texas, Sitting at Fort Worth.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163.

Order allowing writ of error and fixing bond.

On this, the 15th day of February 1901, came Iowa Life Insurance Company, the defendant in the above-styled cause, by its attorney, and presented its petition filed in said cause for the allowance of a writ of error intended to be urged by it in the Supreme Court of the United States, and for the fixing of the amount of security to be given by the defendant upon said writ of error, the same to operate as a supersedeas.

Whereupon, said petition having been considered, and the allegations therein contained having been found to be true, a writ of error is allowed as prayed for, upon the defendant giving bond in accordance with law in the sum of eight thousand dollars, which shall operate as a supersedeas bond; and it is ordered that upon the defendant's giving an approved bond for said amount and otherwise complying with the requirements of the law in such behalf, all fur-

ther proceedings in said circuit court shall be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

EDWARD R. MEEK,
United States District Judge for the Northern District of Texas.

The foregoing has the following endorsement, to wit:

≠163 Lula T. Lewis *vs.* Iowa Life Insurance Company. Order allowing writ of error and fixing bond. Filed 15 day of Feb. 1901. J. H. Finks, clerk by J. B. Finks, deputy.

52 *Defendant's Writ of Error Bond.*

Filed February 15th, 1901.

In the Circuit Court of the United States for the Northern District of Texas, Sitting at Fort Worth.

LULA T. LEWIS
vs.
IOWA LIFE INSURANCE COMPANY. } No. 163.

Defendant's bond on writ of error.

Whereas, in the above-styled cause, then pending in the circuit court of the United States for the northern district of Texas, sitting at Fort Worth, said court did, on to wit: January 12, 1901, render in the plaintiff's favor, and against defendant, a money judgment for the sum of four thousand forty-six dollars, less a credit of seventy-six and $\frac{89}{100}$ dollars, with interest thereon from said date at the rate of six per cent. per annum, and all costs of suit.

And whereas, the said defendant, Iowa Life Insurance Company, has sued out a writ of error to the Supreme Court of the United States to reverse the said judgment above described:

Now, therefore, know all men by these presents: that the said defendant, Iowa Life Insurance Company, a private corporation, as principal, and as surety, the United States Fidelity and Guaranty Company, a private corporation having its domicile in Baltimore, Maryland, and authorized by its charter and by compliance with the laws of the State of Texas to do business as a surety company in Texas, do hereby acknowledge themselves jointly and severally bound to pay to the plaintiff, Lula T. Lewis, or to her executors, administrators or assigns, the sum of eight thousand dollars.

The condition of this bond, however, is such, that if said Iowa Life Insurance Company shall prosecute its writ of error to effect, and, if it shall fail to make its plea good, shall answer all damages and costs, then this bond shall become null; otherwise, it shall remain in full force and effect.

In testimony whereof, said Iowa Life Insurance Company has caused these presents to be signed in its name and behalf by Maurice E. Locke, its attorney of record and agent thereunto duly authorized,

and said The United States Fidelity and Guaranty Company has caused these presents to be signed and its corporate seal to be affixed in its name and behalf by Webster Snyder and Sam. A. Leake, its attorneys-in-fact, thereunto duly authorized, all at Dallas, Texas, this the 15th day of February, A. D. 1901.

53 IOWA LIFE INSURANCE COMPANY,
By MAURICE E. LOCKE,
Its Agent and Attorney.
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By WEBSTER SNYDER,
[SEAL.] SAM. A. LEAKE, *Its Attorneys-in-fact.*

The foregoing bond is examined and approved as a supersedeas bond, and ordered filed, this the 14th day of February, A. D. 1901.
EDWARD R. MEEK,
United States District Judge for the Northern District of Texas.

(15c. revenue stamps affixed and canceled.)

The foregoing has the following endorsement, to wit:
163 Lula T. Lewis *vs.* Iowa Life Insurance Company. Writ of error bond. Filed 15 day of Feb. 1901. J. H. Finks, clerk By J. B. Finks, deputy.

54 *Assignment of Errors.*

Filed February 15th, 1901.

In the Circuit Court of the United States for the Northern District of Texas, Sitting at Fort Worth.

LULA T. LEWIS
vs. } No. 163.
IOWA LIFE INSURANCE COMPANY.

Defendant's assignment of errors.

In connection with its petition for a writ of error to the Supreme Court of the United States, this day filed in the above-styled cause, the defendant, Iowa Life Insurance Company, assigns the following errors, which it says occurred in the trial of said cause by the said circuit court:

1. The court erred in overruling the defendant's first special exception to the plaintiff's first amended original petition, said exception constituting section 3 of the defendant's third amended original answer.

2. The court erred in overruling the defendant's second special exception to the plaintiff's first amended original petition, said exception constituting section 4 of the defendant's third amended original answer.

3. The court erred in refusing to permit the defendant to prove by the witness S. E. Starn, that before the delivery of the policy

sued upon, and the premium receipt which accompanied the same, the form of the contract of insurance which the insured was to receive was fully discussed between himself and said witness, and that it was agreed and understood that as a part of his contract of insurance the insured was to receive such a receipt as was delivered to him, all as shown by the defendant's exception No. 1.

4. The court erred in refusing to give to the jury the defendant's requested special charge No. 1, in words as follows:

"You are instructed that under the undisputed evidence the plaintiff is not entitled to recover, and that therefore you should return a verdict for the defendant."

Said refusal is erroneous, because, under the undisputed evidence, the defendant was entitled to have a verdict directed in its favor.

5. The court erred in charging the jury in words as follows:

"The first question to dispose of is as to whether or not the provision as to the payment of the note at maturity—it being provided on the back of the receipt for the note that the policy shall cease and determine if the note is not paid at maturity, is a pro-
55 vision of the contract entered into by and between the Iowa Life Insurance Company and Thomas M. Lewis; whether Lewis and his beneficiary are to be bound by that provision on the back of the receipt as a part of the policy of insurance.

"The question is not without its difficulties, but from the light which I have before me, and after listening to the argument of counsel, I am of the opinion that the provisions on the back of the receipt are not a part of the contract; that the contract, by its own explicit terms, is wholly included in the policy—the life insurance proper and in the application for such life-insurance policy, which, by the terms of the policy is made a part of the contract. This is recited to be the case in the face of the policy and on the back of the receipt itself. Under the provisions and stipulations of these two instruments, by the passing of the insurance policy to the deceased and the note of the deceased and his promise to pay to the insurance company, the minds of the insurance company and the deceased met, upon the conditions and provisions of the note, contract and the application for the insurance, which made a part of the contract. In the opinion of the court there was no meeting of the minds, or agreement between the parties as to the provision upon the back of the receipt. Such provision is nowhere noted in the face of the contract of insurance, it is nowhere noted in the application for insurance, and the only place it is found is upon the back of the receipt, no reference being made to any such provision elsewhere.

"Even if this provision were considered a part of the contract entered into between the parties, yet it is such a provision, as to be taken advantage of would require affirmative action on the part of the company; that is to say, when the note was not paid at maturity, the company should have within a reasonable time thereafter, notified the insured that in view of the fact that his note given in part payment of the premium upon the policy had not been paid, the policy, which was issued in consideration of such note, ceased and determined. There is no evidence that any such action was taken

on the part of the insurance company. It has been held by authority of weight and respectability, that this would be the necessary steps for the insurance company to take, were the provision which is contained on the back of this receipt contained in the face of the note given by the insured to the company in part payment of the premium. I can understand why the insured should be bound by provisions incorporated in the face of his note, because that note bears his signature, and in so far as it bears his signature it must be his act, and therefore, he himself has agreed to the provision.
56 He signs his own note understandingly and wittingly. Even in that case, however, as I have stated the law as it has been held by courts of weight and authority, is that the company must notify the insured of the non-payment of the note, and that the policy, because of such non-payment has ceased and determined, and that they will no longer be liable thereunder.

"Therefore, on the first branch of this case, or rather the first question, the court has reached the conclusion that the fact that the assured did not upon the maturity of the note pay it, does not lapse the policy, and that it was in effect thereafter. It seems to me that the attitude of the company itself bears out this conclusion, because it being the possessor of the note with knowledge of the date of its maturity, placed it in the hands of a local bank for collection and permitted it to remain there after the date of its maturity, with the bank making its usual and customary efforts to collect the same. This was done with the tacit consent of its agent, Mr. Starns, to whom the note was sent for collection. This note, as has also been said by counsel, is of the highest negotiable character and needed only the solvency of the individual whose name was appended thereto, to make it as good as currency."

Said charge was erroneous for each of the following reasons, to wit:

(*a.*) In law the provision for forfeiture contained upon the back of the receipt given to the insured for his premium was a part of the contract between himself and the defendant, and binding upon the plaintiff.

(*b.*) The provision for forfeiture upon the back of the premium receipt given to the insured was a part of the contract, and by its terms entitled the defendant to have the policy considered forfeited by virtue of the non-payment of the premium note at its maturity, without affirmative action on the defendant's part.

(*c.*) It appears from the undisputed evidence that the premium note represented a little less than half of the amount of the first annual premium, and that at the maturity of the note a little more than half of the first policy year had expired; wherefore, the note had been fully earned and the defendant was entitled to keep it and collect it, and at the same time enforce forfeiture for its non-payment at maturity.

6. The court erred in charging the jury in words as follows:

"There is a provision in the face of the contract of insurance that satisfactory proof of the fact and cause of the death of the insured

must be received and accepted at the company's office in Chi-
57 cago, Ills., under certain conditions and within the terms of the policy, before its liability will attach.

"I have narrated in a somewhat desultory manner, the evidence as to furnishing proof of loss, and it seems to me that under the terms of the contract of insurance, the company is made the judge of what shall be satisfactory proofs of death. The company says that upon receipt of satisfactory proof of the fact and cause of death, its liability will attach, in event it is liable under other conditions of the policy. It must determine for itself what it will accept as satisfactory proof. Therefore, it best knows what its regulations are as to proof of death. The attitude of the company in this respect (and I am not referring to the attitude of its agent, Mr. Starns, in Ft. Worth), but of the secretary and general counsel of the company, who unquestionably acted as its full representatives and agents; their attitude on the matter of proof of loss is such as to here in this case estop the company from setting up the absence of this proof of loss as a defense—setting up that proofs of loss have not been furnished, and that therefore their liability does not attach. When they are called upon to say whether or not they deny liability under this policy, and if not, to permit the representatives of the deceased to make proofs of loss, they practically refuse to furnish blanks for that purpose, and the general counsel says there is no such policy in effect on the books of the company. Construing the statements of their letters in a fair way, they are tantamount, to my mind, to refusing liability on this policy and certainly one would feel it futile to go ahead thereafter and make proof of loss under the circumstances the beneficiary did, not knowing what the company would construe as satisfactory proof. It seems to me as a question of law, that the insurance company should be estopped from here setting up that provision of the policy as a defense to this action."

Said charge was erroneous, because there was no evidence before the court proper to serve as a foundation for a verdict that the defendant had waived its right to require the furnishing of proofs of death, in accordance with the contract, or been estopped from enforcing such right.

7. The court erred in charging the jury in words as follows:

"This being the view of the court, it will be your duty to return a verdict for the plaintiff for the face of the policy, which is three thousand dollars, and also interest thereon at the rate of six per cent. per annum from the first day of January 1900, and also 12
per cent. penalty on the three thousand dollars—not on three
58 thousand dollars and six per cent. added thereto, but 12 per cent. penalty on three thousand dollars. Also for reasonable attorneys' fees for the prosecution of this suit, basing your judgment, of course, on the evidence which has been introduced on that point.

"This, therefore, leaves the jury but one question to determine, this the fixing of reasonable attorneys' fees for the prosecution of this suit."

Said charge was erroneous for each of the following reasons, to wit:

(*a.*) Article 3071 of the Revised Statutes of Texas, which alone purports to require from the defendant the payment of damages and attorneys' fees, is in contravention of the fourteenth amendment to the Constitution of the United States, in that it denies to the defendant, which is a person within the jurisdiction of the State of Texas, the equal protection of the law.

(*b.*) There was no evidence before the court, showing that the plaintiff at any time before or after the institution of the suit, or otherwise than by the mere fact of suit, made demand upon the defendant for the payment of the amount due under the policy sued upon.

(*c.*) There was no pleading or evidence before the court, showing that the plaintiff had paid any attorneys' fees, or become liable to pay any attorneys' fees; or if she had paid them or become liable to do so, to what amount.

For the reasons hereinbefore assigned, the defendant prays that the judgment rendered in said cause by the circuit court of the United States for the northern district of Texas be reversed by the Supreme Court of the United States.

MAURICE E. LOCKE,
Attorney for Defendant.

The foregoing has the following endorsement, to wit:

=163. Lula T. Lewis *vs.* Iowa Life Insurance Company. Defendant's assignment of errors. Filed 15 day of Feb. 1901. J. H. Finks, clerk by J. B. Finks, deputy.

59 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Texas, sitting at Fort Worth, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Iowa Life Insurance Company, plaintiff in error, and Lula T. Lewis, defendant in error, a manifest error hath happened, to the great damage of the said Iowa Life Insurance Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the 17th day of March next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct

that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 15th day of February, in the year of our Lord one thousand nine hundred one.

{ The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth. }

J. H. FINKS,
Clerk of the Circuit Court of the United States for the Northern District of Texas.
By J. B. FINKS, *Deputy.*

Allowed February 15, 1901.

EDWARD R. MEEK,
United States District Judge for the Northern District of Texas.

60 Service of the within writ of error and receipt of a copy thereof are hereby acknowledged this the 15th day of February, 1901.

CAPPS & CANTEY,
Attorneys for Defendant in Error.

A copy of the within writ of error is this day lodged with the clerk for the use of the defendant in error.

J. H. FINKS, *Clerk*,
By J. B. FINKS, *Deputy.*

February 15, 1901.

61 [Endorsed:] # 163. Law. Lula T. Lewis *v.* Iowa Life Insurance Company. Writ of error. Filed 15 day of Feb., 1901. J. H. Finks, clerk. By J. B. Finks, deputy.

62 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Lula T. Lewis, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, to be held at the city of Washington, on the 17th day of March next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Texas, sitting at Fort Worth, wherein Iowa Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States of America, this the 15th day of February, A. D. 1901.

EDWARD R. MEEK,
United States District Judge for the Northern District of Texas.

Attest with seal:

{The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth.}

J. H. FINKS,
Clerk of the Circuit Court of the United States for the Northern District of Texas,
By J. B. FINKS, *Deputy.*

63 THE UNITED STATES OF AMERICA, } ss:
Northern District of Texas, }

I hereby certify that I served the foregoing citation on Lula T. Lewis at Forth Worth, in Tarrant county, Texas, in the northern district of Texas, on the 23 day of Feb'y, 1901, by then and there delivering to said Lula T. Lewis, the defendant in error, personally, a true copy of said citation.

Witness my hand at Fort Worth, in the northern district of Texas, this the 23 day of Feb'y, 1901.

GEO. H. GREEN,
United States Marshall for the Northern District of Texas,
By WHIT DRYDEN, *Deputy.*

Fee	$2.00
Exp	.10
	$2.10

64 [Endorsed:] # 163, law. Lula T. Lewis *v.* Iowa Life Insurance Company. Citation in error. Marshal's docket No 571. Filed 26 day of Feb., 1901. J. H. Finks, clerk. By J. B. Finks, deputy.

65 *List of Papers for Transcript.*

Filed February 15th, 1901.

LULA T. LEWIS *vs.* IOWA LIFE INSURANCE CO. } No. 163. List of Papers for Transcript.

1. Transcript from State court.
2. Plaintiff's first amended original petition.
3. Defendant's third amended original answer.
4. Plaintiff's first supplemental petition.
5. Defendant's first supplemental answer.
6. Order overruling demurrers and exceptions.
7. Judgment.

8. Order extending time for filing defendant's bill of exceptions.
9. Defendant's bill of exceptions.
10. Defendant's motion for a new trial.
11. Order overruling defendant's motion for a new trial.
12. Defendant's petition for a writ of error.
13. Defendant's assignment of errors.
14. Order allowing a writ of error and fixing bond.
15. Defendant's bond on writ of error.
16. Original writ of error.
17. Original citation in error.
18. Clerk's certificate.

2, 15, '01.

MAURICE E. LOCKE.

The foregoing has the following endorsement, to wit:

#163. Law. Lula T. Lewis *vs.* Iowa Life Insurance Company. List of papers for transcript. Filed 15 day of Feb. 1901. J. H. Finks, clerk by J. B. Finks, deputy.

66 *Clerk's Certificate.*

I, J. H. Finks, clerk of the circuit court of the United States, in the fifth circuit and northern district of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, assignment of errors, and all proceedings in cause No. 163 wherein Lula T. Lewis is plaintiff and The Iowa Life Insurance Company is defendant, except that the original writ of error and original citation in error are included therein, instead of copies thereof, as fully as the same remains on file and of record in my office, at Fort Worth, Texas.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth.

Witness my hand officially, and the seal of the circuit court of the United States for the northern district of Texas, at Fort Worth, Texas, this the 27th day of February A. D. 1901.

J. H. FINKS,
Clerk of said Court,
By J. B. FINKS, *Deputy.*

Endorsed on cover: File No. 18,072. N. Texas C. C. U. S. Term No. 265. Iowa Life Insurance Company, plaintiff in error, *vs.* Lula T. Lewis. Filed March 6, 1901.